

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 89672-001

v

Liberty Union Life Assurance Company
Respondent

Issued and entered
this 25th day of July 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On May 7, 2008, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act MCL 550.1901 *et seq.* XXXXX is an employee of the insurance agency administering Petitioner's health insurance. XXXXX is a minor child. XXXXX's representation was authorized by XXXXX's father who is the primary insured individual under the family's Michigan Medchoices certificate of group coverage issued by Respondent.

The Commissioner accepted the request on May 14, 2008. The Commissioner notified Liberty Union Life Assurance Company of the external review and requested the information used in making its adverse determination. Because this case involves medical issues, the Commissioner assigned it to an independent review organization (IRO) which provided its recommendation to the Commissioner on May 28, 2008.

II FACTUAL BACKGROUND

The Petitioner received chiropractic treatment from XXXXX from October 26, 2007 until February 28, 2008. Liberty Union denied coverage for this care indicating it was not medically necessary.

The Petitioner completed Liberty Union's internal grievance process. Liberty Union maintained its denial and issued a final adverse determination dated April 3, 2008.

III ISSUE

Is Liberty Union correct in denying coverage for the Petitioner's chiropractic care?

IV ANALYSIS

Petitioner's Argument

The Petitioner was eight and a half months old when she began chiropractic care on October 26, 2007. The Petitioner's parents believe that her care was medically necessary and should be a covered benefit under the certificate.

The Petitioner's appeal states that Liberty Union's definition of medical necessity is overly broad in scope, lacking objective criteria applicable to this particular situation. Also its definition does not adequately address the benefit factors involved in the Petitioner's course of chiropractic treatment.

Further the appeal states that chiropractic services, including spinal manipulations, are a covered benefit under the certificate. Petitioner's representative argues that an undue emphasis and weight as a criterion for rejection seems to be placed upon a general warning from the American Journal of Pediatrics that, although serious events may be rare, a range of adverse events or delay in appropriate treatment may be associated with the use of spinal manipulation in children. While that may be true as a general statement, its application to the current chiropractic treatment is limited or negligible at best.

The Petitioner's doctor's diagnosis indicated that the Petitioner had a loss of joint motion in the cervical and thoracic spinal levels. Joint extension restriction was noted in the cervical spine involving C4 through C7 vertebral levels of approximately 20% and right lateral flexation was decreased approximately 20% in the 4th and 5th cervical levels. Thoracic palpation revealed motion decrease in the 5th through 7th vertebral spinal levels. In short, the symptoms listed here would seem to fall directly under the definition found on page 35 of the certificate #18:

spinal manipulative therapy rendered by a physician for the detection and correction by manual and/or mechanical means of structural imbalance, distortion or subluxation of or in the vertebral column. . . .

Respondent's Argument

In its final adverse determination, Liberty Union indicated the Petitioner's claims were denied because her treatment was not medically necessary according to the certificate's definition of "medically necessary":

Services and supplies which are determined by the Insurer, or its Authorized Agent to be:

1. appropriate and necessary for the symptoms, diagnosis or treatment of a medical condition;
2. provided for diagnosis or direct care and treatment of a medical condition;
3. within the standards of good medical practice with the organized medical community;
4. not primarily for the convenience of the Insured, the Insured's physician or any other health care provider; and
5. is the most appropriate supply or level of service which can be safely provided.

The claims also did not meet the spinal manipulation therapy guideline in the certificate.

Liberty Union also indicated that current scientifically based peer reviewed literature and evidence based guidelines do not support chiropractic care for infants as medically necessary. Based on this information Liberty Union concluded that the Petitioner's chiropractic claims are not a covered benefit.

Commissioner's Analysis

To resolve the question of medical necessity, the Commissioner had the case file reviewed by an IRO. The IRO physician reviewer is a licensed chiropractor; certified by the American Board of Quality Assurance and Utilization Review Physicians; prior chiropractic medical director for quality assurance; prior editor of a monthly chiropractic newsletter; and is in active practice.

The IRO reviewer determined that the chiropractic services provided to the Petitioner from October 26, 2007 through January 2, 2008, for spinal subluxation at the cervical and thoracic spine levels was medically necessary. However, the reviewer also determined that chiropractic services after January 2, 2008 were not medically necessary. The medical documentation references no further objective gain or change in clinical condition beyond January 2, 2008.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." The IRO's analysis is based on extensive experience, expertise, and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the findings of the IRO that the Petitioner's chiropractic care from October 26, 2007 until January 2, 2008 was medically necessary, but the treatment after January 2, 2008 was not medically necessary since no documentation references objective gain after that date.

**V
ORDER**

Liberty Union's April 3, 2008, final adverse determination is reversed in part. Liberty Union is required to cover the Petitioner's chiropractic care from October 26, 2007 until

January 2, 2008 but is not required to cover this care after January 2, 2008. Liberty Union must cover the chiropractic care from October 26, 2007 until January 2, 2008, within 60 days and provide the Commissioner proof of coverage within seven days after coverage is made.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.